

**MEMORANDUM OF UNDERSTANDING BETWEEN THE WYOMING
BOARD OF LAND COMMISSIONERS AND
THE STATE OF WYOMING
AND
THE UNITED STATES MINERALS MANAGEMENT SERVICE**

1. **Parties.** This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into by and between the Wyoming Board of Land Commissioners and the State of Wyoming whose contact address is the Wyoming Office of State Lands and Investments, Herschler Building, 3rd Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002-0600, and the U.S. Department of the Interior Minerals Management Service whose contact address is U.S. Department of the Interior, Minerals Management Service, 1849 C Street, NW, MS 4230, Washington, D.C. 20240-0001.
2. **Purpose.** The purpose of this MOU is to establish an agreement to jointly develop, analyze, and implement a Federal/State onshore oil royalty-in-kind (RIK) pilot program for Federal and State royalty production in the State of Wyoming.
3. **Term of MOU.** This MOU shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU, and shall remain in full force and effect until terminated. This MOU may be terminated, without cause, by either party by giving written notice by certified mail no less than ninety (90) days prior to the end of any period to which RIK volumes covered under this MOU have been committed by the parties hereto.
4. **Payment.** No payment shall be due from either of the parties hereto as a result of any costs associated with the development and administration for the purpose of this MOU.
5. **Responsibilities of the Parties.**
 - A. The parties to this MOU agree to collaborate and jointly develop and implement an RIK pilot program in the State of Wyoming. The parties will agree on the structure, format, procedures, reporting, contracting, marketing, and verification requirements developed for the pilot. Both parties understand that the ultimate success of the pilot is facilitated by agreement in the planning and operation of the pilot. The parties will therefore strive to resolve any and all disagreements before finalizing the pilot plan.
 - B. Where conflicts arise during the operation of the pilot program, the parties agree to resolve them in a timely manner. It is assumed that conflicts will be resolved by those State and MMS officials responsible for the day-to-day pilot operations within five working days. Where resolution cannot be achieved at this level, the issue will be elevated to the senior responsible officials for each party, such as the Associate Director for Royalty Management and senior State official responsible for mineral leases. If

resolution is not accomplished within 10 days, the parties may exercise options to mutually or unilaterally terminate this MOU. In those instances where additional information is necessary from producers or purchasers, or both, the timeframes in the previous paragraph will commence upon receipt of such necessary information from the purchasers or producers.

C. The parties will mutually agree upon a geographic area of implementation which will be large enough to include sufficient Federal and State royalty volumes, to produce a representative sample of production within the State. It is agreed that this area of implementation will be in the Bighorn and Powder River Basins. The parties further agree to test a variety of methods for selling RIK production.

D. Data provided pursuant to this agreement may contain non-public information. State or MMS staff shall not disclose this information to the public or other parties, and agree not to transmit or otherwise divulge this information without specific requests. If requests are made for this information, it is agreed that the State of Wyoming and MMS will jointly decide on whether and how the information may be released. Such decision will be based on applicable Federal and/or State statutes. The data and other information in this pilot project is considered to be of a pre-decisional and pre-policy nature, therefore subject to joint discretion of the participants from the State of Wyoming and MMS.

The parties agree to jointly develop and release information to media sources.

E. The parties agree to jointly develop an analytical framework and model to assess the adequacy of bids, offers, and other sales of RIK production. This framework will be based on a comparison of current price expectations and prior pricing history for leases as realized under State or Federal royalty valuation rules.

F. The parties agree that all funds received from the sales of in-kind royalty oil volumes shall be remitted by the purchasing parties or oil marketers to the parties on the ownership basis of royalty barrels tendered by each at the time of each payment as required. Each party shall effect separate contracts with the purchasing parties or oil marketers for their respective ownership volumes committed for delivery under this pilot.

G. Nothing in this MOU shall be construed to limit or transfer to any party the right of the State or the U.S. to decide whether to take RIK, determine the manner of disposition of RIK oil, or to accept or reject any and all bids related solely to State or Federal RIK volumes respectively, or to limit each parties legal discretion in the administration of its own RIK volumes.

H. MMS and the State of Wyoming agree that nothing contained in this MOU

contravenes the requirements of Public Law 103-66 pertaining to the deduction of costs from states' receipts for the administration of lands within those states. It is also agreed that both parties will separately account for all administrative costs associated with this RIK Pilot on a direct activity costing basis only. The costs of administering the RIK Pilot, as measured through this direct costing methodology, will provide the basis, along with applicable indirect costs not covered by the direct costing method, for the deduction of costs from State of Wyoming royalty receipts under Public Law 103-66, for those MMS properties involved in the RIK Pilot for the duration of the Pilot. Finally, it is agreed that the parties will collaborate on and share all direct costing information as relates to the administration of the RIK Pilot.

6. **General Provisions.**

A. **Amendments.** Either party may request changes in this MOU. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to this MOU.

B. **Entirety of Agreement.** This MOU, consisting of four (4) pages, represents the entire and integrated agreement between the parties and supersedes all prior representations and agreements, whether written or oral.

C. **Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the State of Wyoming Attorney General and the Solicitor of the U.S. Department of the Interior, or their representatives.

D. **Severability.** Should any portion of this MOU be judicially determined to be illegal or inconsistent with existing laws of either the State of Wyoming or the Federal Government, the remainder of the MOU shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

E. **Sovereign Immunity.** The State of Wyoming Board of Land Commissioners and the United States Department of the Interior, do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

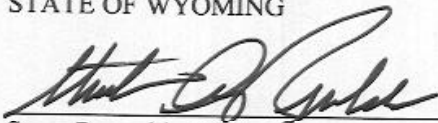
F. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the

benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

7. **Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

WYOMING BOARD OF LAND COMMISSIONERS
STATE OF WYOMING

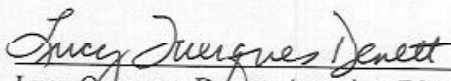


Steve Reynolds, Director
Office of State Lands and Investments

December 3, 1998

Date

U.S. DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE



Lucy Querques-Denett, Associate Director
Royalty Management Program

December 4, 1998

Date